

*These notes refer to the Scotland Act 1998 (c.46)  
which received Royal Assent on 19th November 1998*

# SCOTLAND ACT 1998

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## EXPLANATORY NOTES

### SCHEDULES

#### Schedule 5

### Part II: Preliminary paragraphs

#### Head B - Home Affairs

#### *Section B8: National Security, Interception of Communications, Official Secrets and Terrorism*

#### **Purpose and Effect**

This Section reserves national security, official secrets and special provisions for dealing with terrorism. The functions of the Security Service, the Secret Intelligence Service and the GCHQ are reserved by paragraph 2(4) of Part I of Schedule 5. It also reserves the interception of communications, but not intrusive investigative techniques or the interception of certain communications made to or by a person detained at a place of detention such as a prison or hospital.

This section was amended by article 4 of the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 ([S.I. 1999/1749](#)).

#### **General**

The matters covered by the reservation are:

- (a) national security (including safeguarding the economic well-being of the United Kingdom) and in particular its protection;
- (b) the circumstances under which communications may be intercepted, but not the use by the police of intrusive investigative techniques, such as certain kinds of surveillance or;
- (c) official secrets, in particular the protection of the national interest from activities which involve, or could involve, the unauthorised disclosure of information which might damage that interest; and
- (d) special powers and provisions for dealing with terrorism.

The police and (with certain exceptions) the criminal law generally are not reserved.

The tribunal established by the Interception of Communications Act 1985 is a cross-border public authority and has been dealt with under sections 88 to 90.

Section B10 reserves emergency powers. Aviation and maritime security are reserved by Sections E3 and E4. Paragraph 2(4) in Part I of Schedule 5 reserves functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.

Amendments to the Official Secrets Act 1989 are made by paragraph 26 of Schedule 8.

## **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	186

## **Details of Provisions**

The reserved matters are:

- (a) national security;
- (b) the interception of communications. This is now mainly covered by the Interception of Communications Act 1985. The 1985 Act sets out the circumstances in which communications (by post or by means of a public telecommunications system) may be intercepted and provides for the issue of warrants for such purposes. It also provides for the establishment of a tribunal to investigate whether interceptions have been conducted lawfully, and for the functions and appointment by the Prime Minister of a Commissioner to keep interception activity under review and to assist the tribunal. There is, however, excepted from this reservation:
  - (i) the subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.);
  - (ii) surveillance by the police not involving interference with property; and
  - (iii) the interception of certain communications made to or by a person detained at a place of detention such as a prison or hospital<sup>1</sup>. The types of communication which are not caught by the reservation are written communications intercepted at the place of detention or certain telephone calls from the place of detention. “Place of detention” is defined in the interpretation Section, as is “private telecommunications system” used in the reference to telephone calls. Place of detention includes prison, young offenders institution, remand centre, legalised police cell and hospitals in which persons can be detained.
- (c) the subject-matter of:
  - i. the Official Secrets Act 1911 which makes provisions directed against spying and includes a definition of “prohibited place” such as military establishments, which may not be entered, and the Official Secrets Act 1920, which makes further provision for the protection of prohibited places; and
  - ii. the Official Secrets Act 1989, which makes provision in relation to the disclosure of official information and in particular about the circumstances in which disclosure can be made and the circumstances in which disclosure amounts to an offence. Section 4(2) protects from disclosure information, the disclosure of which results in the commission of a crime, facilitates an escape or otherwise prejudices the safekeeping of persons in legal custody, or impedes the prevention or detection of offences or the apprehension or prosecution of suspected offenders. In line with the general devolution of the criminal law, the protection of information for such criminal law purposes by that subsection is excepted from the reservation.
  - iii. special powers and other special provisions for dealing with terrorism. This will reserve competence to make special provision about terrorism such as is made in the Suppression of Terrorism Act 1978, the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Prevention of Terrorism (Additional Powers) Act 1996. The reservation does not catch general provisions of the criminal law or

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<sup>1</sup> As amended by [S.I. 1999/1749](#)

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public order statutes which, although not directed against terrorists as such, can be used to deal with terrorists.

**Executive Devolution**

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), as amended by Article 4(3) of S.I. 2000/3253.

<p>The Wireless Telegraphy Act 1949 (c.54), section 5(1)(b).</p>	<p>The function of the Secretary of State of authorising persons to use wireless telegraphy apparatus in order to obtain information as to the contents, sender or addressee of any message (whether sent by means of wireless telegraphy or not) and to disclose information about the same: but only so far as the function is exercisable for the purpose of preventing or detecting crime (within the meaning of the Regulation of Investigatory Powers Act 2000) or of preventing disorder.</p>
<p>The Interception of Communications Act 1985 (c.56)<sup>2</sup>.</p>	
<p>(a) section 2; and</p>	<p>The function of the Secretary of State of issuing a warrant requiring the addressee to intercept in the course of their transmission by post or by means of a public telecommunications system, such communications as are described in the warrant and to require disclosure of any intercepted material: but only for the purpose of preventing or detecting serious crime.</p>
<p>(b) sections 4(3) and (4), 5(1)(a) and (2) and 6(1).</p>	<p>The function of the Secretary of State of renewing, modifying or cancelling warrants under section 2 for the purpose of preventing or detecting serious crime; and the function of the Secretary of State of making arrangements for the purpose of securing various safeguards in relation to material intercepted as a result of such warrants.</p>
<p>The Official Secrets Act 1989 (c.6), sections 7(5), 8(9) and 12.</p>	<p>The function of the Secretary of State of prescribing certain bodies which may give “official authorisation” and who may make an “official restriction”. The function of the Secretary of State of prescribing bodies which may give an “official direction”. The function of the Secretary of State of making orders prescribing bodies, office-holders and others who fall within the definition of “Crown servant”.</p>

<sup>2</sup> The entry relating to the 1985 Act was omitted with effect from 14 December 2000 by Article 4(3) of SI 2000/3253

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<p><b>The Intelligence Services Act 1994 (c.13):</b> (a) section 5; and</p>	<p>The function of issuing warrants on the application of the Security Service, the Secret Intelligence Service or GCHQ provided that is for the purpose of supporting the prevention or detection of serious crime. The function is transferred for the purpose of authorising the agencies to interfere with wireless telegraphy and, in the case of the Security Service only, also for interfering with property in Scotland.</p>
<p>(b) section 6(3) and (4).</p>	<p>The function of the Secretary of State of renewing and cancelling warrants issued under section 5 so far as the function under section 5 is transferred.</p>

The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

<p><b>The Police (Scotland) Act 1967 (c.77),</b> section 32A.</p>	<p>The function of the Secretary of State in making grants in respect of expenses incurred (or to be incurred) by a police authority or joint police board in connection with safeguarding national security.</p>
<p><b>The Sewerage (Scotland) Act 1968 (c.47),</b> sections 37B and 55(4).</p>	<p>Section 37B - The function of the Secretary of State to give directions specifying information to be excluded, on the grounds of national security, from a register maintained by a sewerage authority. Section 55(4) - The function of the Secretary of State to certify that, in the interests of national security, any power of entry under the Act should not apply to specified Crown premises.</p>
<p><b>The Control of Pollution Act 1974 (c.40),</b> sections 36(2B), 42A(1), 42A(2), 42A(4) and 105(3C).</p>	<p>Section 36(2B) - The function of the Secretary of State to certify that, in the interests of national security, details of a discharge consent application should not be advertised. Section 42A - The function of the Secretary of State to issue directions and make determinations concerning the exclusion, in the interests of national security, of information from registers maintained by SEPA. Section 105(3C) - The function of the Secretary of State to certify that, in the interests of national security, any power of entry in the Act should not apply to specified Crown premises.</p>

2 The entry relating to the 1985 Act was omitted with effect from 14 December 2000 by Article 4(3) of [SI 2000/3253](#)

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<p><a href="#">The Water (Scotland) Act 1980 (c.45)</a>, section 110A(4).</p>	<p>The function of the Secretary of State to certify that, in the interests of national security, any power of entry in the Act should not apply to specified Crown premises.</p>
<p><a href="#">The Environmental Protection Act 1990 (c.43)</a>, sections 21(1), 21(2), 21(4), 65(1), 65(2), 65(4) and 159(4).</p>	<p>Sections 21 and 65 - The functions of the Secretary of State to issue directions and make determinations concerning the exclusion, in the interests of national security, of information from registers maintained by SEPA. Section 159(4) - The function of the Secretary of State to certify that, in the interests of national security, any power of entry under the Act should not apply to specified Crown premises.</p>
<p><a href="#">The Radioactive Substances Act 1993 (c.12)</a>, sections 25(1), 25(2) and 39(1).</p>	<p>The function of the Secretary of State to give directions to SEPA that, on the grounds of national security, knowledge of a particular application, registration or authorisation should be restricted</p>
<p><a href="#">The Local Government etc. (Scotland) Act 1994 (c.39)</a>, section 117(1), (2) and (5)</p>	<p>Section 117(1) and (2) - The function of the Secretary of State to give to a water and sewerage authority directions of a general or specific nature in the interests of national security or to mitigate a civil emergency Section 117(5) - The function of the Secretary of State to notify a person that, in the interests of national security, anything done under the section should not be revealed</p>
<p><a href="#">The Environment Act 1995 (c.25)</a>, sections 113(2), 113(3) and 115(5).</p>	<p>Section 113(2) and (3) - The function of the Secretary of State to express an opinion that disclosure, or further disclosure, of information under section 113 would be contrary to the interests of national security. Section 115(5) - The function of the Secretary of State to certify that, in the interests of national security, any power of entry under the Act should not apply to specified Crown premises.</p>

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) ( No. 2) Order 2000 ([S.I. 2000/3253](#)).

<p><a href="#">The Regulation of Investigatory Powers Act 2000 (c.23)</a>: (a) section 5;</p>	<p>The function of the Secretary of State to issue a warrant authorising interception but only so far as the function are exercisable for the purpose of preventing or detecting serious crime</p>
<p>(b) sections 9(1)(b) and (3), 10(1)(a) and (2) and 15(1);</p>	<p>The functions of the Secretary to State to vary cancel or renew an interception</p>

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	warrant and to ensure the proper use of intercepted material but only so far as the functions are exercisable in relation to a warrant issued under section 5 by the Scottish Ministers by virtue of the Order
(c) sections 32 and 42;	The functions of the Secretary of State to grant authorisations for intrusive surveillance or an intelligence service authorisations but only so far as the function is exercisable in relation to an application made by a member of the Security Service and where the granting of the authorisation for the carrying out of intrusive surveillance is necessary for the purpose of preventing or detecting serious crime
(d) sections 44 (1) and (2)(b) and 45(1).	The functions of the Secretary of State to sign or cancel authorisations for intrusive surveillance but only so far as the functions are exercisable in relation to the grant of an authorisation for the carrying out of intrusive surveillance under section 32 that is made by a warrant issued under section 42 by the Scottish Ministers by virtue of the Order